## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 16-cr-20833

v.

HAROLD ASHBURN AND KIMBERLY ASHBURN,

U.S. DISTRICT COURT JUDGE GERSHWIN A. DRAIN

Defendant.	

# ORDER GRANTING DEFENDANTS' MOTION TO TERMINATE PROBATION [ECF NO. 79]

On December 15, 2022, this Court sentenced each defendant on felony charges of health care fraud to two-year terms of probation, with various conditions. Both middle-aged Defendants are employed, reside in Flint with their young granddaughter, they have declining health, and are in compliance with all conditions of probation.

On January 10, 2024, Defendants filed a Motion to Terminate Probation. The Government did not respond. Defense counsel consulted Defendants' probation officer and the prosecutor on this case. Neither individual stated an objection to Defendants' request for early termination. ECF No. 79, PageID.250.

The court has the discretionary authority to terminate probation after one year. 18 U.S.C. §3564(c) states, in relevant part, that the Court, "after considering the factors set forth in § 3553(a) to the extent that they are applicable," may, "pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," terminate a term of probation previously ordered and discharge the defendant at any time "after the expiration of one year of probation in the case of a felony." The Court may terminate probation early "if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice."

Fed. R. Crim. P. 32.1 (c)(1)-(2) provides that before modifying the conditions of probation or supervised release, the Court "must hold a hearing." However, no hearing is required as "the relief sought is favorable to the person and does not extend the term of probation." *Id*.

Considering the factors under 18 U.S.C § 3553(a), the Court finds that the conducts of the Defendants and the interests of justice warrant early termination and discharge of their probation terms. Defendants have been on probation for approximately one year and one month. In light of the nature and circumstances of the offense and the history and characteristics of the Defendants, the Court finds that the probation term Defendants have already served is sufficient to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. Further, the probation term that Defendants have served is adequate



#### **PATENT**

#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of

Burbank et al.

For: MEHTODS AND APPARATUS FOR SECURING MEDICAL INSTRUMENTS TO DESIRED LOCATIONS IN A

**PATIENT'S BODY** 

Serial No.: 10/004,987

Filed: December 4, 2001

Docket No.: 9619.1012

Examiner: P. L. Wingood

Group Art Unit: 3738

Customer No.: 23422

13/6

PRELIMINARY AMENDMENT

CERTIFICATE OF MAILING PURSUANT TO 37 CFR 1.8

I hereby certify that this paper is being deposited in the United States Postal Service as first class mail, postage prepaid addressed to BOX RCE, Commissioner for Patents, U.S. Patent and Trademark Office, Washington D.C. 20231, on 12/6/6., in San Francisco, CA.

By:

**BOX RCE** 

Commissioner for Patents U.S. Patent and Trademark Office Washington, D.C. 20231

Dear Sir:

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TECHNOLOGY CENTER R3700

Please amend the above application, as indicated below.

## IN THE CLAIMS

Please amend claim 53 to read as follows:

The medical device of claim 1, wherein said fixation element comprises at least one radially extendable and retractable member which is radially extendable and retractable from a side of the distal end of the shaft, said member having a free end and being configured for securing the distal end of the shaft adjacent target tissue.

#### **REMARKS**

Entry of the above amendment is respectfully requested. No new matter is

introduced by the amendment.

Respectfully submitted,

Edward J./Lynch / Registration No. 24,422 Attorney for Applicants

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## MARKED UP VERSION SHOWING CHANGES

### Please amend claim 53 to read as follows:

53. The medical device of claim [51]1, wherein said fixation element comprises at least one radially extendable and retractable member which is radially extendable and retractable from a side of the distal end of the shaft, said member having a free end and being configured for securing the distal end of the shaft adjacent target tissue.

